

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

LEVERAGED INNOVATIONS, LLC,

Plaintiff,

v.

NASDAQ OMX GROUP, INC.,
NASDAQ OMX BX, INC.,
NASDAQ OMX BX EQUITIES, LLC,
NASDAQ OMX PHLX, INC.,
THE NASDAQ STOCK MARKET LLC,
PROSHARE ADVISORS LLC,
PROSHARES TRUST I, and
PROSHARES TRUST II,

Defendants.

C.A. No. 1:11-cv-03203 (KBF)

NOTICE OF MOTION

PLEASE TAKE NOTICE that upon the annexed affirmations of James R. Myers, J. Steven Baughman, Stephenie Myers, George Foster, Laura Morrison, and Amy R. Doberman, affirmed on February 22-24, 2012, and upon the exhibits attached thereto, the accompanying Memorandum of Law in support of this motion, and the pleadings herein, Defendants ProShare Advisors LLC, ProShares Trust (identified in the Amended Complaint as “ProShares Trust I”), and ProShares Trust II (collectively, the “ProShares Defendants”) will move this Court before Judge Katherine B. Forrest, United States District Judge, for an order pursuant to Rule 56 of the

Federal Rules of Civil Procedure granting the ProShares Defendants motion for partial summary judgment that the majority of claims are barred by a covenant not to sue.

Dated: Washington, DC
February 24, 2012

ROPES & GRAY LLP

By /s/ J. Steven Baughman
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LLC, ProShares Trust, and ProShares Trust
II*

CERTIFICATE OF SERVICE

I hereby certify that on this 24th day of February 2012, I caused to be electronically transmitted a true and correct copy of the above document to the Clerk of the Court using the ECF system for filing and transmittal of a Notice of Electronic Filing to counsel of record.

/s/ J. Steven Baughman
J. Steven Baughman